



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO. 89 OF 2014

IN THE MATTER OF THE ESTATE OF DANIEL KIPKEMOI ROTICH ALIAS KIPKEMOI A. ROTICH (DECEASED)

LEAH CHEPKOROS KIMETTO.....1ST PETITIONER

VERSUS

JOEL KIPSANG BETT.....1ST OBJECTOR/2ND PETITIONER

JANE METTO.....3RD OBJECTOR/3RD PETITIONER

DAVID KIPLANGAT BETT.....2ND OBJECTOR/4TH PETITIONER

RULING NO. 2

1. The dispute in this matter relates to the estate of Daniel Kipkemoi Rotich *alias* Kipkemoi A. Rotich (deceased) who died on the 8th day of October 2010. Following an application for letters of administration intestate and an objection thereto, the court had appointed Leah Chepkoros Kimetto, Joel Kipsang Bett, Jane Metto and David Kiplangat Bett as the administrators of the estate.

2. In a ruling dated 4th October 2017 following a protest to the mode of distribution proposed by the 1st petitioner, this court noted the confusion, indeed what appeared to be deliberate obfuscation, with regard to the assets and liabilities of the deceased. It directed the parties to, within 30 days of the ruling:

- i. **File further affidavits indicting the assets of the deceased, with supporting documents in respect of each asset.**
- ii. **Indicate what parcels of land were sold by the 1st and 2nd Petitioners respectively. If only portions of the land were sold, the portions of the land were sold, the portions sold and the acreage of the parcels remaining.**
- iii. **Give a clear account of the monies realized from the sale by the 1st and 2nd Petitioners and how the monies were utilized, with documents in support.**

3. The parties did eventually file further affidavits and submissions. The 1st petitioner, Leah Chepkoros Kimetto, filed a supplementary affidavit which is undated but was filed in court on 22nd February 2018 and a further supplementary affidavits sworn on 27th November 2018. She avers that the deceased left the following properties in his name:-

- i. **Kericho /Kiptere/1013**
- ii. **Kericho/Kiptere/1012**
- iii. **Kericho/Sosiot/408**
- iv) **Kericho/ Kiptere/1035**
- v) **Kericho/Kipkelion/Barsiele Block 6 /Chemamul/28**
- vi) Kericho/Kipkelion/Barsiele block 6/Chemamul/4**
- vii) **Kericho /Kipkelion/ Barsiele Block 6/Chemamul/3**

viii) Motor vehicle KAG 624 a tractor ford.

ix) KUG 345 Daihatsu

x) KTZ 595 Peugeot saloon

xi) Tea bushes approximately 20 acres

xii) Bank accounts

xiii) Kenya Highlands Sacco (Kapsoit)

xiv) Barclays

xv) Standard Chartered

4. She further averred that the 'titles' (sic) to Kericho/Kiptere /1012, 1013 and 1035 were closed after subdivision but no titles were issued and so the parcels still belong to the deceased. She attached copies of the green cards marked as LK 2A, B & C".

5. The 1st petitioner further explained that with regard to motor vehicles KAG 624S, the record does not indicate the deceased as the owner. She alleged, however, that there was in existence a logbook which is in the possession of Bernard Bett which is in the name of the deceased but that the said Bernard Bett has refused to supply a copy of it.

6. With respect to the liabilities of the estate, the 1st petitioner avers that the deceased left behind the following liabilities:

a. ICDC loan Kshs. 5.3

b. AFC loan Kshs. 650,000

c. National Bank-Ksh. 4,270,902.10

d. Sunmat Self Help Group-Kshs 117,000

7. It was her averment that the loan to ICDC has been paid in full; that she settled part of the loan to ICDC by disposing of 15 acres of the deceased's land with her son Tarus and her daughter Esther. The said 15 acres comprised the following properties belonging to the deceased:

a) L.R number Kericho /Kipkelion/Barsiele Block 6 (Chemamul) 3

b) L.R number Kericho /Kipkelion/Barsiele Block 6 (Chemamul) 7

8. She sets out the purchasers of the properties as being:

i. Raphael Kibet Koske-7.0 acres (Kericho /Kipkelion/Barsiele Block 6 (Chemamul) 3

ii. Paul Kipnetich Barta-1.0 acre (Kericho /Kipkelion/Barsiele Block 6 (Chemamul) 3

iii. Simeon Cheruiyot Langat 6.0 acres (Kericho /Kipkelion/Barsiele Block 6 (Chemamul) 3

iv. Kipsang Bii 1.0 acre Kericho /Kipkelion/Barsiele Block 6 (Chemamul) 3.

9. The petitioner attached to her affidavit copies of the sale agreements in respect of the 15 acres of the deceased's properties, from the sale of which she stated that she had realized a total of Kshs. 6,310,000/=.

10. With regard to how she had utilized the above funds, she sets out the use of the funds as including a payment to ICDC of Kshs 1,463,000; payment of a civil debt due from one Bernard Kipkurui Bett, a beneficiary of the estate, of Kshs 895,000; and a payment to one Geoffrey Tarus, also a beneficiary of the estate, of the sum of Kshs 2, 200,000 in respect of what she termed 'upkeep and debt and construction of a toilet at Kshs 65,000, leading to a total expenditure of Kshs. 5,250,000.00.

11. She further avers that she had retained Kshs. 1,000,000 which she has been using for her upkeep as her children were not supporting her.

12. The 2nd petitioner, Joel Kipsang Bett, filed affidavits sworn on 21st May 2018 and a further affidavit sworn on 17th October 2018. He states in his first affidavit that the estate of the deceased comprised the following assets:

a) Kericho /Kipkelion/Barsiele Block 6 (Chemamul) 4

- b) Kericho /Kipkelion/Barsiele block 6 (Chemamul) 28
- c) Kericho /Kipkelion/BarsieleBlock 6 (Chemamul) 3
- d) Kericho /Kiptere/1013
- e) Kericho /Sosiot/408
- f) Kericho /Kiptere/1012
- g) Kericho /Kiptere/1282
- h) Kericho /Kiptere/1062
- i) Kericho /Kiptere/1035
- j) Motor Vehicle KAG 624S a tractor ford.
- k) Motor vehicle KUG 345 a Daihatsu; and
- l) Motor Vehicle KTZ 595 Peugeot 504.

13. The 2nd petitioner states that he has sold a total of 21 acres out of Kericho/Barsiele/Block 6 (Chemomul) 27. He names the purchasers as being:

a)Geoffrey KiprotichChirchir (3.5 acres)	Kshs. 1,155,000.00
b) Chirchir Nicholas (2.0 acres)	Kshs. 700,000.00
c) GilfredChepkorir (2.0 acres)	Kshs. 750,000.00
d) Albert Mutai (1.0 acres)	Kshs. 370,000.00
e) Evans KipronoNgetich (1.0 acres)	Kshs. 350,000.00
f) Jane ChemutaiSeley (2.6 acres)	Kshs. 962,000.00
g) Vincent KipkemoiRono (4.0 acres)	Kshs. 1,380,000.00
h) Caroline Cherono (1.0 acres)	Kshs. 370,000.00
i) Simon Nkanel (2.4 acres)	Kshs. 750,000.00
j) Beatrice Chepngeno(1.0 acre)	Kshs. 370,000.00
k) Edmond Rotich (1.0 acre)	<u>Kshs. 370,000.00</u>
TOTAL	<u>Kshs. 7,537,000.00</u>

14. From the proceeds, he had made payments of Kshs. 5,512,895.00 to the ICDC, with respect to which copies of deposit slips and account statements were attached as annexure “JKB4”.

15. He had further made payment to AFC in respect of the liability of the deceased amounting to Kshs. 1,748,471.40, with receipts in respect thereof attached.

16. The 2nd petitioner further averred that he had paid Kshs200,000.00 at the Milimani Law Courts Nairobi on behalf of his brother Bernard Bett who had been arrested for a civil debt; KshsKshs. 60,000.00 to the firm of M/s Kipkorir Tele and KiturAdvocates as a deposit on legal fees in this matter, and utilized Kshs 20,945.00 as general expenses.

17. In his second affidavit sworn on 17th October 2018, he averred that the deceased had only left liabilities in two institutions, ICDC (Kshs 5.370,000.00) and AFC (Kshs. 1,451,780.000). There was no loan outstanding in National Bank of Kenya as the deceased had fully repaid it

through the sale of L.R.No. Kericho/Kiptere/1995.

18. The 2nd petitioner averred that the 1st petitioner had paid Kshs 695,600.00 in part payment of the debt of about Kshs. 895,600.00 that his brother, one Bernard Kipkirui Bett, owed to one Daniel Kimoni, while the 2nd petitioner had paid Kshs. 200,000. He denied that the 1st petitioner had constructed a toilet at a cost of Kshs. 65,000.00, averring that it cost only Kshs. 15,000.00. He relies in support on a valuation report in respect of the said toilet.

19. It is his averment further that Geoffrey Kibet Tarushad denied receiving Kshs.2,200,000.00 from the 1st petitioner and had sworn an affidavit to this effect which was annexed to the 2nd petitioner's affidavit.

20. According to the 2nd petitioner, he has been taking care of the 1st petitioner through payment of her transport and medical bills at Baralka Medica Clinic (Mau Summit), contribution to her NHIF, cultivation of her crops and renovation of her house.

21. In her further supplementary affidavit sworn on 27th November 2018 in response to the 2nd petitioner's affidavit whose contents I have set out above, the 1st petitioner maintains that she paid Kshs 895,600 to Daniel Kimoni and annexes what she terms an agreement in respect of the payment as well as a bank deposit slip and Mpesa statements in the name of Grace Chumo.

22. The 1st petitioner accused the 2nd petitioner and the said Geoffrey Tarus of falsehoods in their averments before the court and in particular that the 2nd petitioner lied when he alleges that he has been taking care of her.

23. In the respective submissions filed by the Advocates for the 1st and 2nd petitioners respectively on 28th November 2018 and 27th November 2018, the parties reiterate their averments which I have set out above.

24. It was submitted on behalf of the 1st petitioner that the deceased had 20 acres of tea bushes from which he used to earn millions in bonuses, but that the objectors (the 2nd -4th petitioners) have, from 2010, been earning the monthly incomes and bonuses without disclosing the figures and the amount. The 1st petitioner further submits that one Joseph Bett illegally transferred the deceased's shares at Kenya Highland Sacco in Kapsoitinto his name, and the said shares should revert to the deceased's estate for distribution.

25. The 1st petitioner further submitted that she had been unable to get the correct status of the following properties which she believes belonged to the deceased:

a. **Plot at Lodiani**

b. **Plot at Kamwingi**

c. **Plot at Barsiele town**

d. **Plot at sosiot (Laplotian**

e. **Kericho/Kiptere/1035.**

26. In submissions on behalf of the 2nd petitioner, his Learned Counsel also reiterated his averments with regard to the loans due from the estate of the deceased. It was submitted that the 1st petitioner had failed to account for the part of the estate she had sold. The 2nd petitioner submitted that Kericho/Barsiele/Block 6 (Chemamul) 28, which he had sold, had been earmarked for sale, and not Kericho/ Barsiele/ Block 6 (Chemamul /3 which the 1st petitioner had sold. Further, that the 1st petitioner had sold the property, which was worth Kshs. 5,450,000.00, but had only been able to show a deposit slip of Kshs. 800,000.

27. The 2nd petitioner further submitted that the amount of Kshs. 859,000 allegedly paid to one Daniel O. Kamoni was a personal debt that did not involve the estate of the deceased. The 2nd petitioner therefore submitted that the 1st petitioner had misappropriated the estate of the deceased to the tune of Kshs. 4,650,000.00 which she has been unable to account for.

28. Counsel for the 2nd petitioner further submitted that the 2nd petitioner was aware of several other assets of the deceased that have either not been disclosed or ascertained. It was his submission that the assets needed to be ascertained before distribution. His submission therefore was that the grant of letters of administration intestate issued on 8th June 2015 be confirmed but that the entire estate of the deceased be vested and registered in the joint names of all the four administrators as this will enable the administrators to transfer to the buyers their portions and to jointly deal with the currently unascertained assets once ascertained.

29. In the ruling of this court made on 4th October 2017, I had issued what were in my view clear directions to the parties on what was required to enable this court complete the distribution of the estate of the deceased. Unfortunately, and with due respect to Counsel for the parties, this matter is more or less where it was two years ago, with the court not much wiser on the true position of the estate of the deceased.

30. What is not in dispute is that the deceased was polygamous, so his estate must be distributed in accordance with section 40 of the Law of Succession Act.

31. What is also clear is that the beneficiaries of the estate have grossly intermeddled with the estate of the deceased. While the 1st and 2nd petitioners claim that they needed to sell part of the estate to settle the liabilities of the estate, there is no indication that there was ever an order of the court obtained to authorise the sale of the assets.

32. From the averments of the parties, it appears that at least three of the assets of the deceased have been sold:

a. **Kericho /Kipkelion/Barsiele Block 6 (Chemamul) 3**

b. **Kericho /Kipkelion/Barsiele Block 6 (Chemamul) 7**

c. **Kericho/Barsiele/Block 6 (Chemomul) 28**

33. The first two were sold by the 1st petitioner, while the last was sold by the 2nd petitioner.

34. While the 1st and 2nd petitioners have sought to give some accounts of how the proceeds from the sale have been utilized, what can be said with any degree of certainty, as the parties have been agreed on it, is that the liabilities of the deceased have been settled.

35. Further, an amount of Kshs. 859,000 was paid in respect of a civil debt due from one Bernard KipkuruiBett, a beneficiary of the estate, and that the 1st petitioner kept for herself, out of the proceeds of sale of part of the deceased's estate, Kshs 1,000,000.

36. The 1st petitioner has made various statements in her submissions which are matters of fact that were not before the court, and cannot be placed before the court by way of submissions. These statements relate to alleged tea bushes on 20 acres- the location is not disclosed- and properties which she believes the deceased owned but for which titles are not available. The parties had been directed to place before the court all the evidence that would show which assets belonged to the deceased, and they have largely failed to do so. Should such evidence emerge, the parties are at liberty to place it before the court and apply for administration and distribution thereof.

37. As matters now stand, as far as the court can make out on the available evidence, the following are the properties of the deceased available for distribution:

i. Kericho /Kipkelion/Barsiele Block 6 (Chemamul) 4

ii. Kericho /Kiptere/1013

iii. Kericho /Sosiot/408

iv. Kericho /Kiptere/1012

v. Kericho /Kiptere/1282

vi. Kericho /Kiptere/1062

vii. Kericho /Kiptere/1035

viii. Motor Vehicle KAG 624S a tractor ford.

ix. Motor vehicle KUG 345 a Daihatsu; and

x. Motor Vehicle KTZ 595 Peugeot 504.

38. The real properties forming part of the estate of the deceased shall be distributed among the beneficiaries in accordance with section 40 of the law of Succession Act, taking into account the amounts already received or paid in respect of the beneficiaries as set out above.

39. The real properties sold to third parties to repay the loans due from the estate of the deceased, namely:Kericho /Kipkelion/Barsiele Block 6 (Chemamul)) 3, Kericho /Kipkelion/Barsiele Block 6 (Chemamul) 7 and Kericho/Barsiele/Block 6 (Chemomul) 28 shall be transferred by the administrators to the respective purchasers.

40. The motor vehicles and shares registered in the name of the deceased shall be sold and the proceeds thereof distributed among the beneficiaries in accordance with section 40 of the Law of Succession Act.

41. The parties shall bear their own costs of this matter.

Dated and Signed at Nairobi this 24th day of July 2019.

MUMBI NGUGI

JUDGE

Dated Delivered and Signed at Kericho this 29th day of September 2019.

GEORGE DULU

JUDGE